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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Children and juveniles in detention

Report of the Secretary-General pursuant to Commission on Human Rights resolution 1996/32

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Introduction

1. The present report is submitted by the Secretary-General in accordance with paragraph 16 of Commission on Human Rights resolution 1996/32 of 19 April 1996, entitled "Human rights in the administration of justice, in particular of children and juveniles in detention". In paragraph 12 of that resolution, the Commission urged States to take fully into account in their national legislation and practice the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and to disseminate them widely. In paragraph 15 of the same resolution, the Commission requested the United Nations High Commissioner for Human Rights to continue to pay special attention to the subject of juvenile justice and, in close cooperation with the Committee on the Rights of the Child, the United Nations Children's Fund and the Crime Prevention and Criminal Justice Division of the United Nations Secretariat, to develop strategies to ensure effective coordination of technical cooperation programmes in the field of juvenile justice, in particular within the framework of his Plan of Action to strengthen the implementation of the Convention on the Rights of the Child.

2. The Secretary-General invited Governments, by note verbale of 21 June 1996, to provide relevant information. As of 24 October 1996, the Governments of Australia, Austria, Botswana, Chile, Croatia, Estonia, France, Germany, Iraq, Jordan, Malta, New Zealand, Spain, Sweden, Ukraine and the United Kingdom had sent such information.

3. Requests for information were also sent, on the same date, to the relevant United Nations bodies, the specialized agencies and intergovernmental and non-governmental organizations. As of 24 October 1996, information had been received from the European Institute for Crime Prevention and Control, the League of Arab States and Human Rights Watch.

4. The full texts of all communications, as well as the publications mentioned in this document, are available in the files of the United Nations Centre for Human Rights. The Government of Austria also sent information drafted on the basis of a questionnaire on the application of international standards concerning the human rights of juveniles deprived of their liberty.

I. INFORMATION RECEIVED FROM GOVERNMENTS

Australia

[Original: English]
[24 September 1996]

The Government of Australia submitted two papers prepared jointly by the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission entitled "Speaking for ourselves: children and the legal process". In addition, the Australian Government made available an extract of the national legislation about children in conflict with law and the administration of juvenile justice.

Austria

[Original: English]
[14 June 1996]

1. The Federal Act of 1993 amending the Code of Criminal Procedure has limited the obligation under section 84 of the Code of Criminal Procedure of official "psycho-social counsellors" to report offences for prosecution. This applies, for instance, to the staff of youth welfare offices, social, family and drug counselling services as well as to probation officers, teachers or attorneys for children and juveniles.

2. Also, the Federal Act of 1993 amending the Code of Criminal Procedure contains new provisions regarding the imposition and prolongation of detention on remand. The rule of the proportionality of detention on remand and the principle that it should be applied only in exceptional cases have been strengthened. Specific periods of detention and mandatory reviews have been introduced, and the legally admissible maximum term of detention on remand preceding a trial has been limited to three months for juveniles (one year in the case of serious crimes). In addition, the general obligation has been introduced to consult the officers of the juvenile court assistance service in detention reviews so as to ensure the best possible use of the technical competence of the psychologists and social workers working for the assistance service and of the information available to them.

3. In case of arrests, the information requirement has been extended to include the youth welfare officer who must be informed of the institution of proceedings against a juvenile.

4. The range of persons who may be asked to take part in the questioning of a juvenile detainee has been enlarged to include "family members, teachers and pedagogues". The juvenile concerned must be informed of this right immediately after his arrest.

5. In proceedings before courts and proceedings before assize courts, the accused juvenile must be given a defense counsel ex officio for the entire duration of the proceedings.

6. As a result of the Federal Act of 1993 amending the Law on the Enforcement of Sentences, the provisions of the sentences enforcement law concerning the general exclusion of convicts from the permission to receive parcels no longer apply to juvenile convicts. Any pay a convict receives for his work must now be credited to juvenile convicts in the same way as for adult convicts.

Additional elements concerning the juvenile justice system in Austria

7. The judges and prosecutors in charge of juvenile delinquency must have special pedagogic knowledge and special skills in the fields of psychology and social work. At the district court level, guardianship and curatorship cases involving minors and criminal cases involving juveniles are now handled by the same court division. The assize court must include a minimum of four lay judges who are teachers, pedagogues or persons who have worked in the fields

of public or private youth welfare or youth care. The assessors court must have at least one such person, and at least one whose gender is the same as that of the accused.

8. The protection of the principle of the presumption of innocence is enshrined in section 7a of the Mass Media Act which stipulates that in specific circumstances victims and suspects have a special civil right to damages if their identity is unduly disclosed in media reports. Interests worthy of protection of the person concerned are violated in any case where the identity of a juvenile is disclosed to the public.

9. Both parents or other legal representatives of the juvenile have the right to be heard in criminal proceedings, to give facts, ask questions and file motions and to take part in hearings to the same extent as such a right is granted to the accused.

10. All judgements and decisions rendered by a court may be appealed.

11. If an accused does not have sufficient knowledge of the German language, he must be granted free linguistic assistance, usually in the form of an interpreter.

12. In certain conditions, both the public prosecutor and the court have the right to drop the criminal charges raised against juveniles. Such a waiver of prosecution may be made dependent on an offence compensation agreement reached out of court be temporary by setting a qualifying period or be conditional on meeting of certain requirements by the juvenile.

13. Capital punishment has been abolished in Austria. It should be added that in the case of juveniles all maximum fines and terms of imprisonment provided for under criminal law are reduced by half. It is not permitted to sentence a person to life imprisonment if he or she had not completed age 20 when the offence was committed. In practice, criminal courts only rarely impose prison sentences on juveniles, except in cases of very grave or recurrent offences.

14. Prison sentences are served by juveniles in special institutions or, at least, in special wards of general prisons. They may receive one visit at least once a week for one hour, get instruction, if necessary, and are offered the opportunity in special institutions to get and complete vocational training.

Botswana

[Original: English]
[18 September 1996]

1. Since 1981, the Government of Botswana has promulgated legislation by which a Commissioner of Child Welfare was appointed for each district and special courts established to deal with children and juveniles.

2. One of the essential elements of the legislation is that children and juveniles may not be sentenced to imprisonment. If deemed necessary, the legislation provides that such child/juvenile should be taken to a place of

safety or a school of industry. The intention is that children or juveniles should not be treated like ordinary criminals but should be afforded every opportunity to stay in society and be brought up as respectable citizens.

3. Finally, the legislation of Botswana provides that any parent or person having custody of a child who neglects or ill-treats the child is guilty of an offence, because in the Government's view, it is negligence or ill-treatment that eventually leads the child into delinquency.

Chile

[Original: Spanish]
[23 July 1996]

1. A National Plan of Action in favour of children was promulgated in 1991. Among other items, the Plan gave priority to the attainment of targets relating to "children in conflict with the law". These targets were: to develop and pursue a national policy of child protection; to establish a new institutional framework and services to deal with child offenders; to forestall hazards to society and, in particular, possible violations of the law; and to promote community participation.

2. When ratifying the Convention on the Rights of the Child, the Government set up an Intersectoral Advisory Commission which made a comprehensive assessment of the situation of children at risk and put forward a number of proposals which have generally found their way into the National Plan of Action. The Commission's assessment established the need to give priority to policies on juvenile lawbreakers, most though not all of whom belong to the poorer sectors of the population; one priority set was that of making urgent changes both in the law and in the institutional framework and working methods.

3. The legislation in force, which dates back to 1928, regards children and teenagers as requiring "protection" and retains the institution of due discernment, the possible finding of danger and the lack of guarantees of due process, giving the courts excessive discretion over minors' freedom and allowing them to go so far as to deprive minors of their liberty as a "protective measure" if they consider them to be at risk, even where they have not been shown to have committed any offence.

4. In modernizing the justice system, the Government has given priority to reforming legislation on minors, seeking to create a modern, consistent legal framework in keeping with basic human rights, underpinned by the Chilean Constitution, the international instruments acceded to by Chile and, especially, the Convention on the Rights of the Child. The main changes made as regards juvenile offenders have been:

(a) Decree No. 663 of 5 October 1992: deletion of entries from the judicial records. This decree benefits minors convicted of a crime by eliminating entries in the judicial records, thus facilitating their return to society. In the case of convicts sentenced to non-afflictive punishment the entry in the judicial record shall be deleted upon completion of the sentence.

But if these minors are sentenced to afflictive punishment they must wait for three years to elapse after completing their sentences before the entry in the judicial record is deleted;

(b) Resolution No. 1,820 of 6 August 1993. Before any laws were passed, a resolution by the Sub-secretariat of Justice in August 1993 established a central- and regional-level working party to get minors out of adult penitentiaries. A study of minors in Chilean gendarmería units during the first half of 1993 was drawn up, the objective being to spur action to deal with the problems that minors held in penitentiary establishments posed throughout the country;

(c) Decree No. 509 of 21 March 1994 establishing working parties to remove minors from adult prisons. This decree was issued to bring together various bodies working directly with minors at risk, particularly juvenile offenders. These intersectoral working parties function continuously and are intended to ensure that article 5 of the Organization Act, No. 18.575, on the general foundations of State administration is properly complied with; they are supposed to coordinate their efforts to prevent the confinement of minors in adult penitentiaries by making recommendations to the authorities responsible for incarcerated juvenile lawbreakers;

(d) Decree No. 778 of 18 May 1994, abolishing the option of committing non-imputable minors to prison. In order to prevent non-imputable minors from being committed to adult prisons, and pending legislation on the subject, article 12 of Decree No. 2531 dated 24 December 1928 as amended, approving the regulations on the protection of minors, has been repealed. This has restricted the scope for juvenile courts to use gendarmería facilities to detain minors;

(e) Decree No. 1,103 of 28 July 1994, on subsidies for the care of imputable minors. This decree authorizes the National Service for Minors to grant a subsidy to the gendarmería for all minors under 18 detained for delinquency or breaking the law. This enables the minors to be looked after better, and puts an end to the arbitrary discrimination against minors under 18 who were found to be imputable;

(f) Act No. 16.343 of October 1994 on the removal of minors from penitentiary establishments. This Act amended Act No. 16.618, containing the definitive text of the Minors Act, and other legislation. It took effect in 1995 and has since produced a considerable reduction in the committal of minors to gendarmería facilities. The Act prohibits the committal of youths under 16 to adult penitentiaries and restricts the committal of youths aged between 16 and 18 while it is being established whether they are capable of due discernment. It sanctions the establishment of youth detention centres and the substitution of rehabilitation, protection and aid for minors for sentences of imprisonment. At the same time it required the President, pending the creation of completely separate establishments for minors, to issue a decree indicating the centres to which minors could be committed in places lacking centres for observation and diagnosis;

(g) Decree No. 1.698 of 27 December 1994. This decree designated transit and transfer centres, centres for observation and diagnosis, and the

establishments to which minors whose capacity for due discernment is liable to be verified can be committed, in places lacking centres for observation and diagnosis.

Statistics on detained juveniles

	March 1993		March 1994		March 1995	
	Male	Female	Male	Female	Male	Female
Detained for protection	66	36	55	21	15	7
Detained for lawbreaking	214	17	188	5	91	3
Undergoing trial	264	4	157	6	133	1
Convicted	16	0	15	0	9	0
Total	643		447		259	

Source: Gendarmería.

5. In 1990, with financing from taxes, the National Service for Minors launched a behavioural rehabilitation programme intended to improve, develop and create open treatment systems; to evaluate existing rehabilitation systems; and to run psychosocial support programmes for imprisoned minors in order to get them out of prisons. The scheme includes:

(a) Descriptive studies and diagnoses of imprisoned youths;

(b) Systems for evaluating open behavioural rehabilitation programmes;

(c) A programme of support for the courts dealing with minors and imprisoned juveniles in conflict with the law. This incorporates other programmes such as a psychological diagnostic service, a community involvement programme, extension of the assistance available under open care programmes, and training for youths undergoing rehabilitation.

6. In order to speed up the administration of justice, new minors' courts have been established since 1992 to hear cases brought under the Minors Act and the law on abandonment and maintenance payments. Seven new minors' courts have been set up in different regions of the country.

7. Besides the acts on minors and juvenile offenders there are other pieces of legislation on situations or offences involving juveniles in particular circumstances. These are Act 19.327, on violence at stadiums, and Act 19.366, on trafficking in drugs and psychotropic substances; both contain special provisions and lay down alternatives to sentences of imprisonment for juveniles.

8. Work is in progress on a number of pieces of legislation to further the objective of bringing legislation on minors into line with the Convention on the Rights of the Child, including bills on affiliation, adoption, and sexual and other offences; two bills of special relevance to the subject, a bill on

and other offences; two bills of special relevance to the subject, a bill on breaches of the criminal law by juveniles and another on family courts, are at the last stages of consideration before being referred to Congress in the coming months. In addition, The Ministry of Justice is studying a bill dealing with breaches of the criminal law by juveniles and undertaking a complete reform of the system of guardianship.

Croatia

[Original: English]
[18 October 1996]

1. Children and juveniles are recognized by the legislation of the Republic of Croatia as vulnerable groups, hence they are protected by laws on criminal procedure, especially relating to the specific situation of children and juveniles in custody. During the period of custody, juveniles must be separated from adult detainees. The treatment of juveniles is carried out with the aim of helping and protecting juveniles by means which develop their sense of responsibility and enable them to integrate into society.

2. A reform of criminal legislation is currently taking place in the Republic of Croatia. The objective of the new legislation is the effective protection of human rights within the development of crime prevention and criminal justice policy. The working text of the Law is inspired by the model of the 1974 German Law and the 1988 Austrian Law. In the preparation of the provisions of the working text, attention has been paid to the recommendations of the United Nations dealing with the problems of juvenile delinquency. Similarly, the provisions of the Convention on the Rights of the Child and those of the Council of Europe have been taken into account.

3. In the Republic of Croatia, alongside a network of social work centres which covers the entire country, there are 11 establishments for the education of children and young people with behavioural problems, including delinquency. During the period from 1 January 1990 to 31 August 1996, under article 35 of the Law of Internal Affairs, there were 97 cases of detained juveniles. In the same period, two cases of the crime of extraction of a statement under duress and five cases of the crime of mistreatment through the misuse of office were registered and criminal proceedings against the police officials involved are taking place.

4. Finally, it should be noted that the Ministry of Internal Affairs has organized the education of its officials according to the United Nations Standard Minimum Rules for the Administration of Juveniles Justice (The Beijing Rules). The process of establishment, starting from 1 January 1996, of special groups of police officials for the treatment of juveniles is currently under way.

Estonia

[Original: English]
[9 August 1996]

In 1992, the Government of Estonia adopted the Law on Protection of Children for persons under the age of 18. According to this law, paragraph 34, section 2, minors cannot be arrested "unless it is absolutely necessary". Children and juvenile offenders can be placed in special educational institutions or rehabilitation centres.

France

[Original: French]
[22 August 1996]

1. In its ordinance of 2 February 1945, the French Government laid down the principle of special treatment for juvenile delinquents, combining penal sanctions with educational measures. By giving priority to educational measures over penal sanctions, the ordinance recognizes that juvenile delinquents have a right to education.

2. In French law, minors in conflict with the law are subject to special rules, applied by specialized magistrates and courts, in the form of juvenile magistrates, juvenile courts and juvenile assize courts. A specific feature of penal law for minors is the composition of the juvenile courts, in which each juvenile magistrate is assisted by two co-magistrates.

3. In order to deal more effectively with juvenile delinquency, the French Government has launched the "urban recovery pact", which includes a set of new judicial measures coordinated around three basic aims: speeding up the course of penal justice for minors, diversifying educational measures and improving the consistency of juvenile delinquency prevention measures. In this respect, 50 units with improved educational facilities have been created to deal with youngsters experiencing the greatest difficulties.

4. Since the acts of 4 January 1993 and 24 August 1993 came into effect, police custody ("garde à vue") and temporary detention ("retenue") have been subject to conditions which ensure added protection for minors under the age of 16. Children aged between 10 and 13 cannot be held in police custody, but may be temporary detained if there is strong, concurring circumstantial evidence to the effect that they have committed or attempted to commit a crime or an offence punishable with a least seven years' imprisonment. Temporary detention is subject to certain conditions: it may not last for more than 10 hours and the minor must see a lawyer. In addition, the physical conditions of temporary detention are very strictly defined in order to limit the constraints involved. Any temporary detention must furthermore be reported by the Procurator of the Republic to the Ministry of Justice.

5. Under French legislation concerning pre-trial detention, the possibilities of imprisonment for children are strictly limited: it is

totally prohibited for children under 13 and strictly limited in duration according to the offence. Minors may be imprisoned either during the course of the investigation, subject to an order for pre-trial detention, or as a form of penalty once they have been sentenced.

6. According to the terms of article 11 of the ordinance of 2 February 1945, "in all cases minors shall be held in special quarters or failing that in special premises. They shall as far as possible remain isolated at night". Every effort is made to limit the duration and the most harmful effects of imprisonment. In order to improve the conditions of imprisonment for minors, the Government has selected 52 establishments which offer the possibility of maintaining family relations and avoid imprisoned minors being isolated in unsuitable quarters.

Germany

[Original: English]
[5 November 1996]

Criminal law relating to young people

1. On 1 December 1990 a modernized juvenile criminal law, mainly based on the results of empirical research, entered into force for all of Germany. The new law accords even more importance to the concept of reform within the meaning of article 14 (4) of the International Covenant on Civil and Political Rights than in the earlier law of Germany.

2. The new law expands the options available to public prosecutors to avoid bringing charges and to take instead less drastic measures, such as discontinuation of proceedings if the offender redresses the wrong done to the victim. Where formal charges are unavoidable and the offender is convicted, there are now more possibilities for the judge to exert a reforming influence on young offenders. A number of so-called reformatory measures are available to judges (disciplinary measures and imposition of conditions).

3. Very much stricter preconditions have been attached to the imprisonment of young people awaiting trial. This may now only be ordered where absolutely necessary and other options are not available - for example an approved reformatory. If a warrant of arrest of a juvenile is executed, he or she must be appointed defence counsel.

Youth prison system

4. According to the latest national statistics, on 30 November 1995, 914 juveniles (14 but not yet 18 years of age) were on remand detention, including 28 women. At that time, there were 4,858 persons in youth custody, including 131 young women. According to the total figures provided by the Federal Länder, about 10 per cent of detainees are youths under the age of 18. The others serving youth custody are adolescents or persons over 18 who have been sentenced to serve youth custody.

5. Statutory regulations on the youth custody system are only contained in a small number of fundamental and organizational provisions of the Youth

Courts Act and the Prison Act. Most of the circumstances of life in prison were made the subject of regulation by the Länder, which are responsible for the prison system under the German Constitution, in their "National Administrative Regulations on Youth Detention", which takes the Prison Act as its orientation.

6. The same applies to remand detention of juveniles and adolescents. Here too, there are only a small number of fundamental provisions to be found in the Youth Courts Act and in the Code of Criminal Procedure, whilst everyday life in prison is largely determined by national administrative provisions, the Remand Detention Code.

7. On principle, youth custody is executed in youth custody centres. Remand detention of juveniles is executed in a separate institution, or at least in a separate department. The task of the youth custody system is to teach convicts to lead a law-abiding and responsible life. A main characteristic of the youth custody system is both schooling and vocational training.

8. A further element of youth custody is encouraging inmates to exercise sensible leisure pursuits and sport. Staff in youth custody centres must be particularly suited and trained for this. Granting relaxation of the regime, such as short leave, leave and work outside the prison, also serve as preparation for future life. Special emphasis is placed on maintaining contacts with family members and others outside prison.

Enforcement of prison sentences

9. Pursuant to the German constitutional order, the Federation has only legislative competence for the prison service. It has primarily exercised this competence by creating the Prison Act, which entered into force on 1 January 1977. The individual Länder are responsible for implementing the statutory provisions and for all associated administrative tasks. The Länder are thus responsible not only for staffing and for buildings, but also for the organization of individual prisons, in which they are not subject to supervision or instructions from a Federal authority.

10. From an organizational point of view, the prison service is part of the ministries of justice of the individual Länder. The "Land Judicial Administrations" exercise control over the penal institutions (sect. 151 subsect. 1, first sentence of the Prison Act). In the context of service control and legal control, the Land ministries of justice examine whether the actions of prison staff are legal. Specialist control entails examining whether staff also act in accordance with their profession.

11. Each penal institution is headed by a governor who is normally a lawyer and is responsible for representing the institution vis-à-vis the outside world and bears responsibility for the entire penal regime.

12. As far as internal prison organization is concerned, there are also only very broadly worded statutory provisions. The Prison Act provides in this respect that "prisons shall be organized in such a manner that prisoners

can be formed into surveyable groups for care and treatment" (sect. 143, subsect. 2). The Länder therefore also have considerable scope for discretion in prison organization and structure.

13. In order to achieve as uniform an implementation as possible of the wording of the Prison Act, the Länder cooperate on many levels, both with each other and with the Federal Ministry of Justice.

Enforcement of youth custody

14. There is a special system of sanctions under the German legal order for criminal offences committed by juveniles and adolescents, i.e. those who were not yet 21 years of age at the time of offence. Youth custody is to be enforced in a youth centre (sect. 92, subsect. 1 of the Youth Courts Act), so that there is a youth prison system separate from the adult prison system.

15. Statutory regulations repeatedly speak of "education" and youth prison is characterized by this concept. However, the legislator has not yet specified any rules to meet the statutory duty of education. As yet, there is no extensive statutory regulation for the youth system, as it exists in the form of the Prison Act for adults' prisons. In order to be able to organize youth custody in the individual Länder in accordance with uniform principles, the Land administrations of justice have issued national administrative provisions on the youth custody system containing detailed regulations on the youth prison system. The lack of a statutory rule is very largely regarded as an unsatisfactory situation.

Iraq

[Original: Arabic]
[18 December 1995]

The Government of Iraq indicated that the Iraqi Juvenile Welfare Act No. 76 of 1983 showed concern for unruly juveniles and prescribes measures and procedures appropriate to their personalities in order to ensure their freedom, education and reform. It also established a special juvenile judiciary that follows appropriate procedures when investigating and trying juveniles. Under the terms of the Act, juveniles may be detained only in cases involving serious felonies.

Jordan

[Original: Arabic]
[27 September 1996]

1. The Ministry of Social Development is the State body responsible for the administration of the institutions in which juveniles are detained and deprived of their liberty under the terms of a court order. These institutions always endeavour to apply the various international instruments concerning the rights of the child, the administration of justice and the specifications of institutions in which they are detained.

2. The probation officer, appointed by the Ministry of Social Development, submits a report to the juvenile judge in order to acquaint him with the family and the social aspects of the juvenile's environment. The Ministry intervenes to provide foster families and social institutions for children without shelter and to monitor juvenile care centres. Furthermore, the Ministry is implementing its constitutional and legal obligation to enrol children and juveniles in school so that they can complete their education.

Malta

[Original: English]
[13 August 1996]

1. The Probation of Offenders Act, 1957, subsection 5.1, allows for the supervision of an offender in a therapeutic programme that involves reconciliation between both parties involved in a criminal act, i.e. the victim and the offender. Such programmes are not obligatory for either party, and require mutual consent.

Ministry for Home Affairs

2. One of the main priorities of the Ministry for Home Affairs this year (1996) is the establishment, within the existing national Correctional Facility, of a Young Offenders' Wing. A suitable building, within the same prison complex, is currently being refurbished. Young offenders between the ages of 16 and 24 admitted to this wing will not be in contact with other prisoners in the remaining part of the prison complex.

3. The Ministry for Home Affairs has also recently set up a Substance Abuse Assessment Unit within the existing Correctional Facility, where imprisoned substance abusers (including juveniles) sentenced for less than two years can undergo an in-house rehabilitation programme. A halfway house is also being planned for this client group. In this context, prisoners will be able to undergo a social reintegration programme which includes group therapy and family support to reduce the likelihood of recidivism.

4. The Ministry has recently recruited five qualified probation officers to be responsible for probation work within the Ministry as well as to facilitate mediation and reconciliation work between victims and offenders - a field which is relatively new in Malta.

5. Based within the vice squad section of police headquarters, a victim support section has the brief to trace runaway minors, work with child and juvenile prostitutes and help them access mainstream services, refer juvenile offenders to the Socio-Legal Unit of the Department for Children and Family Services, etc.

6. For the first time a Code of Practice for the Interrogation of Arrested Persons came into effect on 1 April 1996. This Code of Practice is accessible to arrested persons and members of the public. Apart from establishing general rules and procedures for questioning of suspects, it makes a specific reference to juveniles who are required to be interviewed by the police. Youths and children attending school or other educational institutions should

not, as far as possible, be arrested or interviewed at school. Where it is found essential to conduct the interview at school, this should be done in the presence of the head teacher.

Ministry for Social Development

7. The Social Welfare Development Programme (SWDP), a Ministry for Social Development-funded agency, offers the following specialized services for abused children:

(a) A Child Protective Services Unit (CPSU) which is composed of five full-time social workers who undertake interdisciplinary work with doctors, teachers, police, lawyers, etc. CPSU personnel also represent children in courts, including the Juvenile Court which is responsible for appeals against care orders and interim care orders. Since the establishment of this specialized service in September 1994, CPSU has received over 460 referrals;

(b) SWDP is supporting, on behalf of the Ministry for Social Development, a Helpline for Abused Children and Victims of Domestic Violence, called Supportline 179. This national helpline was initiated in January 1996. Children and young people are learning to use this helpline to access other services targeted to their needs;

(c) SWDP has in September 1996 established a Domestic Violence Unit (DVU) which is run by six social workers, one of whom is also a lawyer and doubles as a legal officer. Social workers work closely with battered women and their children. Since September 1994, the Unit has received over 450 referrals of families traumatized by constant abuse;

(d) SWDP also provides the services of a group worker for children who are clients of the Child Protective Services Unit and the Domestic Violence Unit;

(e) SWDP has also started a Child Crisis Centre where abused children are medically examined.

8. Currently (July 1996), the Ministry for Social Development, through its Social Welfare Planning Unit, is formulating a service plan for a secure or semi-secure facility for young early offenders. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the 1990 United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) are being used as the guiding standards in the planning process.

9. The Ministry for Social Development has sent the social welfare planner within the SWDP to participate in the first International Interdisciplinary Course on Children's Rights organized by the Children's Rights Centre of the University of Ghent, Belgium, from 29 June to 6 July 1996.

10. The Juvenile Court Act of 1980 complies with the content of the Riyadh Guidelines and the Beijing Rules. The Juvenile Court can appoint two non-legal assistants during every court session to assist the magistrate

in arriving at his decisions. These assistants are chosen from the following professions: social work, sociology, teaching, etc. The Beijing Rules prohibit the stereotyping and labelling of juveniles. The Maltese Juvenile Court fulfils this rule by being a closed court; press and public are not admitted to its proceedings. The cases of children and juveniles in conflict with the law are heard in an informal setting outside the formal national Law Courts building, in the State multi-purpose social work centre. In the Juvenile Court, imprisonment and depriving juveniles of their liberty are only used as an extreme measure of last resort. The Court prefers to use non-custodial measures such as community-based correctional methods. Suspended sentences and probation orders which incorporate restitution and compensation measures are becoming more common.

11. The Socio-Legal Unit within the Department for Children and Family Services, Division for Family and Social Affairs, is responsible for casework with juvenile status offenders, technical support to the Juvenile Court magistrate, and maintaining a statistical database on juveniles in conflict with the law referred to the Unit as well as those appearing before the Juvenile Court.

New Zealand

[Original: English]
[29 October 1996]

1. New Zealand has a separate youth justice system, established under the Children, Young Persons and Their Families Act 1989. This Act applies to children under 14 years of age and young persons (of or over 17 years of age), and contains measures whereby the courts and social welfare system may respond to young offenders. The cornerstones of the youth justice provisions in the Act are diversion, accountability, due process and community (family/victim) participation.

2. Also relevant is the New Zealand Bill of Rights Act 1990. This Act affirms a number of fundamental rights, including in section 25 the right for the child to be dealt with in a manner that takes into account his/her age.

3. New Zealand also appointed a Commissioner for Children pursuant to section 410 of the Children, Young Persons and Their Families Act 1989. The functions of the Commissioner are set out in section 411 and include the monitoring of child policies and practices, and the investigation of decisions and recommendations made in respect of any child.

4. The United Nations Rules for the Protection of Children Deprived of Their Liberty, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Guidelines for the Prevention of Juvenile Delinquency are reflected in the national legislation and practice so far as is practicable.

5. The youth justice principles set out in section 208 of the Children, Young Persons and Their Families Act 1989 support the objective that custodial sentences are to be used only as a last resort, and are to be short, except for the most serious crimes. These principles include:

(a) Young offenders should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public;

(b) Any sanction imposed should take the least restrictive form that is appropriate in the circumstances;

(c) The age of the person is a mitigating factor in determining whether to impose sanctions and the nature of those sanctions.

6. New Zealand does not operate separate youth prisons for young prisoners. Current policy is that as far as practicable inmates under 20 years of age should be kept apart from inmates of or over that age. Furthermore, New Zealand has entered a reservation to article 37 (c) of the Convention on the Rights of the Child, concerning the mixing of juvenile and adult prisoners. The Government has reserved its right not to apply this article in circumstances where the shortage of suitable facilities makes the mixing of juveniles and adults unavoidable; and further where the interests of other juveniles in an establishment require the removal of a particular juvenile offender; or where the mixing is considered to be of benefit to the persons concerned. A similar reservation was entered to article 10 (3) of the International Covenant on Civil and Political Rights when New Zealand ratified it in 1978.

7. A primary objective of the Children, Young Persons and Their Families Act 1989 is, inter alia, to ensure that where children or young persons commit offences they are held accountable and encouraged to accept responsibility for their behaviour (sect. 4). A further principle of the Act provides that any measures for dealing with offending by children or young persons should have due regard to the interests of any victims of that offending (sect. 208).

8. The Family Group Conference, a decision-making forum which lies at the heart of the youth justice system in New Zealand, is a procedure which can encourage mediation, restitution and reparation. The jurisdiction of the Conference is limited to the disposition of cases, with the aim of achieving a negotiated response to the offending. It is mandatory for a Family Group Conference to be held to consider a case whenever criminal proceedings are either contemplated (where the youth has not yet been arrested) or brought against a youth.

Spain

[Original: Spanish]
[17 October 1996]

1. The Juvenile Courts were established in 1985 as specialized judicial bodies within the ordinary system of courts. The Act for Judicial Demarcation and Planning of 28 December 1988 provides for the creation of 70 courts of this kind.

2. Furthermore, special training has been launched for counsel on the legal aid list for the defence of juvenile delinquents. For the moment this is in operation in the cities of Madrid and Barcelona and will gradually be extended to the rest of the Spanish provinces.

3. The new Penal Code, approved by Fundamental Act 10/1995 of 23 November, raises the age of majority from 16 to 18 years, establishing in its article 19 that, if minors of that age commit an offence, they may be held responsible under the terms of a law regulating the criminal responsibility of minors.

4. In a ruling on 14 February 1991, the Constitutional Court stated its position in regard to the 1948 legislation on juvenile courts, declaring unconstitutional the procedure which was followed in those courts. This ruling explicitly takes up in full the terms of Article 40.2 (b) of the Convention on the Rights of the Child, concluding that the fundamental rights covered by our Constitution have to be respected also in criminal proceedings against minors. Nevertheless, as the Constitutional Court explains in the same ruling, not all the principles and guarantees required for proceedings against adults have to be ensured in this case in the same way. One example is the principle of publicity, with a view to ensuring minors' right to privacy.

5. In the light of the importance of the above ruling and the reports of the Defender of the People (Ombudsman), the Government presented to the Cortes Generales and that body adopted Fundamental Act 4/1992 of 5 June amending the Act governing the Competence and Procedure of the Juvenile Courts, which follows the criteria of the Convention on the Rights of the Child and whose direct connection with the latter was clearly stated in the ruling of the Constitutional Court of 14 February 1991. Fundamental Act 4/1992 was drafted on the basis of the rights recognized in the Convention and the recommendations of other international texts, such as the Beijing Rules, which apply to minors between the ages of 12 and 16 years.

6. In addition, Act 4/1992 introduced the principle of discretion throughout the procedure. Thus, when the Government Procurator is informed that a minor has committed an offence, he can decide whether to take proceedings against that minor or not. The juvenile court may then, having regard to the minor nature of the offence, to the conditions and circumstances of the juvenile concerned, to whether violence or intimidation was employed, or to whether the juvenile has compensated for or undertaken to compensate for the damage caused to the victim, and always provided that the Government Procurator so requests, decide to shelve the case. Otherwise, the court summons the juvenile to appear before it. In the light of that appearance, or subsequently, when the Government Procurator presents a report on the allegations, the court may hand over the juvenile to the branches of the administration responsible for minors for them to adopt whatever educational measures they deem appropriate.

7. Such measures include:

1. A warning or detention for one to three weekends;

2. Probation;

3. Fosterage by another person or by a family;

4. Deprivation of the right to drive motorcycles or motor vehicles;

5. Provision of community services;

6. Outpatient treatment or admission to a treatment centre;

7. Admission to an open, semi-open or custodial establishment.

Sweden

[Original: English]
[17 July 1996]

1. In Sweden, the age of criminal responsibility is 15. There are no offences under Swedish legislation which may be exclusively committed by juveniles or adults. The aim of legislation work is for criminalization to be a last resort in coping with problems. Only the most reprehensible acts should be criminal offences.

2. In judging the penalty for an offence, it is considered to be aggravating circumstances if the defendant has induced a juvenile to be an accomplice to a crime by means of coercion, deceit or misuse of his youth, lack of comprehension or dependent status. In these cases, the juvenile is given a milder sentence and if the offence was petty no liability is imposed.

3. Special rules for legal proceedings against juveniles suspected of offences are contained in the Care of Young Persons (Special Provisions) Act (1964:67). The Act was recently amended with the aim of further adapting procedure to the special demands made in juvenile cases. The new rules entered into force on 1 March 1995. The new aspects primarily apply to the work of the police and the prosecutor and in court, and also to the social services. The aim of these rules is to achieve a more rapid and qualitatively improved processing of cases and matters in which persons under 18 are suspected of offences.

4. The special rules for instituting legal proceedings against juvenile offenders may be described as follows:

(a) Preliminary investigations into an offence in which the person suspected of the offence is under 18 shall, where possible, be led by a prosecutor or policeman specially suited for dealing with juvenile cases in view of his/her interest and aptitude;

(b) The parents of the juvenile or others who are responsible for the care and upbringing of the young person must be informed of the situation and be summoned to police questioning of the juvenile. The municipal social welfare committee is to be informed when juveniles are suspected of offences and given an opportunity to attend police questioning, unless their presence could be detrimental to the investigation;

(c) Preliminary investigations into offences for which the sentence is imprisonment for longer than six months shall always be led by a prosecutor if the suspect is under 18;

(d) In principle, a statement shall always be obtained from social services concerning the circumstances of the juvenile. The chief rule is that the prosecutor should obtain the statement at the preliminary investigation stage. Juveniles have greater chances than adults of obtaining a public defence counsel under a special provision;

(e) In forming his judgement, the prosecutor shall take into consideration whether the juvenile is receiving care under the auspices of the social services or in some other way, whether the offence was committed out of mischief or rashness and whether the juvenile showed a desire to compensate for the damage caused by the offence. The possibility to forego prosecution is limited in the case of a relapse into crime;

(f) There are also special rules for handling cases against juveniles in court. Most of these rules apply to young people up to the age of 21. The main hearing in a juvenile case shall be held within two weeks of the date on which the prosecution was instituted;

(g) When a person under 21 is prosecuted, hearings may be held behind closed doors if attention is manifestly detrimental to the young person. Judgements in cases against persons under 21 should normally be pronounced orally at the main hearing. It is also possible to have a court examine - by means of so-called evidentiary proceedings - whether a person under 15 has committed an offence.

5. In Sweden, there is no such absolute prohibition against mixing prisoners under 18 with other prisoners. However, prisoners have their own rooms.

6. At any given time there is an average of between 5 and 15 prisoners under 18 in custody in Sweden. Under section 3 of the Act concerning Treatment of Persons Detained and Arrested, a detained person, particularly if he is under 21, shall be kept in custody in a manner which ensures that he is not subjected to the detrimental influence of other detained persons. In Sweden, social contacts between inmates of jails are encouraged. If detained persons under the age of 18 were not allowed to have any contact with adult inmates, this would mean that they would be isolated more than other inmates.

7. When persons sentenced to imprisonment are placed in institutions, under the Act on Correctional Treatment in Institutions (1974:203), consideration shall be given to the inmate's need of education or treatment. However, attempts are made in Sweden to avoid sentencing persons under 18 to penalties involving deprivation of liberty.

8. Consideration is given to Sweden's international commitments at an early stage in legislation work. Knowledge of international commitments is included in the law studies required for judges, prosecutors and attorneys.

9. The basic police training programme includes a week on the theme "Juveniles". Instruction in this area covers, amongst other things, practical police work in relation to juveniles, criminal and social policy, and psychology. Police trainees and prison officers also study human rights instruments.

10. There are special provisions in the Care of Young Persons (Special Provisions) Act concerning deprivation of liberty during preliminary investigations. Persons under 18 may not be kept for questioning or apprehended for longer than three hours. The police may keep a juvenile longer than would otherwise have been necessary (albeit not longer than three hours) in order to be able to hand him over to his parents or some other adult.

11. The possibilities of taking children into custody under Swedish legislation relating to aliens are relatively limited at present. The new provisions in this area have meant a limitation of the prerequisites for detaining children. It should be underscored that under the Swedish system it is absolutely prohibited to detain children under the age of 16 in a prison, remand centre or police cell. Children may stay in hotel rooms or similar locations under requisite supervision. The prerequisites for taking children into custody are regulated in chapter 6, section 3, of the Aliens Act (1989:529).

12. Chapter 2 of the Instrument of Government prohibits capital punishment (sect. 4) and corporal punishment (sect. 5). Persons who were under 21 at the time they committed an offence may not be sentenced to life imprisonment (chap. 29, sect. 7). Only a very small number of juveniles are sentenced to imprisonment and chiefly for extremely serious crimes.

13. Juveniles are also sentenced to pay fines for offences. Fines which are not paid voluntarily or cannot be recovered may in exceptional cases be converted to a prison sentence, despite the Act on Enforcement of Fines (1979:189).

14. If a person under 21 is to receive care or be subjected to some other measure under the Social Services Act (1980:620) or the Care of Young Persons (Special Provisions) Act (1990:52), in most cases the sanction is to commit the juvenile for care administered by social services.

15. When, in reaction to an offence, a person is committed to care administered by social services, regard is not paid to the principle of proportionality to any great extent. However, a fine may also be imposed in addition to this sanction.

16. Under chapter 30, section 4, of the Penal Code, special attention shall be paid to circumstances that tell in favour of a sanction milder than imprisonment. Hence, a conditional sentence and probation should, if possible, be chosen instead of prison for juveniles who are not committed for care administered by the social services. Electronic surveillance has also been introduced on a trial basis, making short terms of imprisonment enforced outside the prison.

Ukraine

[Original: English]
[23 September 1996]

1. The Constitution of Ukraine and the Ukrainian Law on Minors' Matters and Special Institutions for Minors determine the legal basis of the activities of the special institutions for minors, which are charged with social protection and prevention of offences among persons under the age of 18.

2. Taking into consideration that juvenile delinquents are specific categories of young people who require a particular education or re-education, the Ukrainian Constitution establishes the creation of reception centres for minors and the creation of medical and social rehabilitation centres for minors. Shelters for minors have been established according to the needs of each region with a view to providing temporary accommodation of minors aged from 3 to 18 who require social protection by the State.

3. Courts consider the following cases:

(a) Minors who committed a criminal offence;

(b) Minors aged 16 to 18 who committed an administrative offence;

(c) Placing juvenile delinquents in centres for minors;

(d) Parents' or tutors' administrative responsibility concerning the education and teaching of children;

(e) Restriction or deprivation of parents' rights;

(f) Restoration of parents' rights and settlement of disputes between parents concerning the place of residence of minors;

(g) Issues concerning the personal and property rights of minors.

4. The Institute of Judicial Educators was established by the court to fulfil the execution of the court's decision concerning minors. Its main tasks are:

(a) Participation in the execution of the court's decisions, provided for by article 6 of the Ukrainian Law on Minors' Matters and Special Institutions for Minors;

(b) Elimination of the reasons and conditions promoting the commission of illegal activities;

(c) Education or re-education of minors;

(d) Assisting parents in the re-education of minors.

5. The issue of criminal liability of juveniles is regulated by article 10 of the Criminal Code of Ukraine. Determination of the minimum age for

criminal liability is connected with the physiological process of gradual formation of a person's ability to realize his conscious actions and to understand the danger of actions committed. The age of criminal liability shall be differentiated. Under the general rule, those who have reached the age of 16 before the commission of the offence shall be criminally liable. A person who reached the age of 14 shall be criminally liable only for the commission of certain socially dangerous offences. Persons aged 14 to 16 cannot be liable for offences committed by carelessness, excepting murders. The Government of Ukraine created a criminal militia on minors' matters. This militia was authorized to detain minors under the age of 15 who were left without guardianship.

6. Coercive measures of a correctional nature, as set out in article 11 of the Criminal Code, are applicable to a person who has committed less social dangerous offences for the first time. Juveniles aged 11 to 14 can be sent to general education schools for social rehabilitation. Up to the age of 18, juveniles can be sent to specialized professional schools.

7. The Law on Minors' Matters and Special Institutions for Minors, adopted by the Supreme Rada of Ukraine in 1995, regulates the conditions of juveniles in special educational institutions.

8. Deprivation of liberty may be applied to juveniles who have reached the age of criminal responsibility in educational labour colonies, which can be of general or tightened regime.

9. Persons under 18 released from educational labour colonies are sent to parents or their substitutes. Juvenile delinquents may be given a conditional sentence. A court may comply with the request of a public organization or workers' collective at the place of work of the accused and transfer the conditionally sentenced person to them for correction and re-education.

10. In case of persistent violations by a conditionally sentenced person involving measures of administrative penalty or public impact, the court may decide to terminate the conditional sentence and to prescribe a sentence of deprivation of liberty on the recommendation of a Body of Interior or a Service on Minor's Matters.

11. If the sentenced person does not commit any offence during the term of probation, the person shall be released automatically and shall be considered without criminal record.

12. When prescribing a punishment for a juvenile who is being sentenced for the first time to a deprivation of liberty for a maximum of three years, the court, considering the degree to which the committed offence is a social danger, the personality of the accused and the possibility of re-education, may grant a reprieve to such a person for the term of one to two years. The control of the conduct of a sentenced person to whom reprieve has been granted is under the competence of a Body of Interior or the Service on Minor's Matters. If the sentenced person to whom a reprieve had been granted does not meet his obligations and violates public order or labour discipline, the court may decide to terminate a reprieve and order him to serve a sentence. At the

end of a reprieve, the court, on recommendation of the supervisory body, shall take a decision on the release of the sentenced person from punishment.

13. With respect to the death penalty, persons aged less than 18 who committed a capital offence cannot be sentenced to the death penalty even if they are already 18 at the moment of the sentence.

United Kingdom

[Original: English]
[15 October 1996]

1. In the United Kingdom, the Police Code and Criminal Evidence Act 1984 and the accompanying codes of practice make special provision for juveniles in police detention. In conformity with the Code of Practice C, every court must have regard to the welfare of any juvenile who is brought before it and must deal with him or her in a language appropriate to his or her age.

2. In formulating policy on the remanding and sentencing of juveniles, the Home Office takes into account, where possible, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. Young offenders in custody are also subject to the Young Offender Institution Rules 1988 which seek to follow, as closely as possible, the terms of the United Nations Rules.

3. From the age of 10, juveniles can be held accountable for their criminal actions. However, government policy has long been that parents should take some share of the responsibility when their children offend. Children aged 12-14 are always held in special child-care establishments (CCEs). Children aged 15-18 are generally held in Prison Service Young Offenders Institutions (YOIs). Offenders aged 18-21 are also regarded as young offenders and held in YOIs. Sentenced female juveniles are held in establishments which hold not only female young offenders aged 15-21 but also women aged 21 and over.

4. The Government of the United Kingdom is committed in broad terms to the view that juveniles should only be detained as a measure of last resort and for the shortest period of time. Courts may only order those juveniles to be detained before trial who present a risk of serious harm to the public. A person arrested for an offence can be held for up to 24 hours in police detention before charge. Detention in excess of 36 hours requires the authority of a magistrate. A detention room for juvenile suspects should be located outside the cell corridor. Her Majesty's Prison Service reserves the right to accommodate children and juveniles with adults.

5. Some of the disposals available for young offenders provide the offender with the opportunity to make reparation to the victim directly or indirectly. Courts may also order a young person to pay compensation to the victim. This order will usually be paid by the parent if the young person is under 16.

6. There are programmes in establishments designed to help young offenders (YOs) tackle their drug addiction, offending behaviour and other behavioural problems and which provide education and training designed to go some way to

making up for the knowledge and skills that the offenders lack. Juveniles of compulsory school age must receive at least 15 hours of education a week.

II. INFORMATION RECEIVED FROM UNITED NATIONS BODIES

European Institute for Crime Prevention and Control

[Original: English]
[21 October 1996]

The European Institute for Crime Prevention and Control is at present not conducting activities specifically focused on children and juveniles in detention. However, in the course of their regional analysis of the results of the Fifth United Nations Survey (1990-1994) of Crime Trends and Operations of Criminal Justice Systems, they are currently waiting to receive information on the number of juveniles in custody. Similarly, the European Institute is now collecting data on the number of prisoners throughout Europe and North America, and some of their questions seek to determine the number of juveniles in custody.

III. INFORMATION RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS

League of Arab States

[Original: Arabic]
[18 July 1996]

1. The League of Arab States attached special importance to the matter of children and juveniles in detention because of its belief that children are a nation's future and the basis for its progress and vitality. The Arab States had therefore sought to strengthen and support children's rights and to that end promulgated the Charter on the Rights of the Arab Child in 1983.

2. In addition, the Council of Arab Ministers of Labour, at its twenty-third session in March 1996, adopted the Arab Convention on Youth Employment and the General Department of Legal Affairs was considering a draft Arab convention on youth welfare to be submitted to the Council of Arab Ministers of Justice for adoption at its twelfth session in November 1996.

3. Article 22 of chapter II of the draft convention, entitled "Measures", stipulated that:

> "(a) A social monitoring bureau attached to the juvenile court shall prepare a juvenile social file, provide counselling and social monitoring services and undertake such tasks as may be assigned to it by court.
>
> "(b) The bureau shall be composed of counsellors and social workers employed either by the State or by the officially recognized private sector."

4. Article 25 of the above-mentioned draft convention stipulates that:

> "It shall be prohibited to conduct an interrogation or court hearing of a juvenile in the absence of his or her legal guardian, a substitute for the guardian or a representative of the social monitoring bureau."

5. The Children's Department of the General Department of Social and Cultural Affairs of the General Secretariat of the League of Arab States is currently preparing a "Comprehensive Model Legal Manual on the Rights of the Arab Child".

IV. INFORMATION RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

Human Rights Watch

[Original: English]
[12 September 1996]

Human Rights Watch condemned treatment of Roma (Gypsy) street children by police and confinement of children in labour education schools in Bulgaria. In this regard, the Human Rights Watch sent to the United Nations Secretariat its publication entitled "Children of Bulgaria: Police Violence and Arbitrary Confinement" (New York, 1996), the main aim of which is to contribute to the reform and/or abolishment of the current system of Labour Education Schools and Local Commissions in Bulgaria.

V. CONCLUSIONS

General considerations

1. Firstly, it should be noted that the main international instruments concerning juvenile justice, namely the United Nations Rules for the Protection of Children Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, have become a constant source of inspiration for the drafting of national legislations and remarkable attempts have been made to comply with their provisions. In view of the widespread ratification of the Convention on the Rights of the Child, signatory States should adopt or modify their legislation in accordance with the Convention's provisions. In addition, renewed efforts should be made to translate all relevant standards into as many languages as possible.

2. Secondly, in many cases the gap between the contents of national legislations and their implementation is still impressive. Whereas this situation could be justified by poor economic conditions, it is less understandable in countries where ad hoc budgets for social programmes for juveniles are available. Abstracting from the present report, it should be recalled that in several countries, either a juvenile justice system does not exist or it is still in a rudimentary stage. Often, there are juvenile justice codes administered by ordinary criminal judges.

3. Thirdly, the field of juvenile justice continues to be a theatre of reforms: new legislation, national and international plans, special policies

and strategies are constantly introduced. On the one hand, this trend shows a constant, if not increasing, interest in issues relating to juveniles which needs to be transformed into effective initiatives. On the other hand, this proliferation of activities, where the lack of coordination among the actors is one of the main features, risks negatively affecting the implementation of the very basic rules for a correct administration of juvenile justice in accordance with universally recognized human rights.

4. Finally, the implementation of preventive measures to diminish the risk of involvement of juveniles in criminal activities appears to be the most recent feature in the field of juvenile welfare. These measures can be roughly divided into two parts: the first concerns the possibility of reducing the participation of juveniles in adults' criminal activities through reinforced action against adult criminals using juveniles as accomplices; the second concerns all those measures which are carried out to ensure the protection of youth, such as free phonelines.

Age of criminal responsibility

5. The age for criminal responsibility, which varies from 10 to 21 years, is still one of the main bones of contention. Increasing importance has been given to the seriousness of the crime in relation to the juveniles' accountability.

Detention pending trial

6. As regards the arrest and the detention pending trial of juveniles, several countries sent information concerning the availability of legal defence without cost for the accused and the establishment of precise rules and limits to the conditions and length of detention. As a consequence, the whole judicial itinerary - arrest, accusation, prosecution, trial and sentencing - should be accelerated and therefore be less traumatic for the juvenile. Moreover, there is an increasing trend towards a mixed composition of the courts where judges can also be welfare officers, pedagogues, psychologists, etc. The same can be said of the assistance extended to juveniles in detention pending trial or charge. Any charge made against a juvenile should be formalized within hours of the moment of arrest. Longer periods of detention, up to four days, should be authorized by a magistrate in cases of serious crimes and only because of the absolute necessity for further investigation. Special training courses for police officers dealing with juveniles are in existence. One of the basic principles of the Beijing Rules, the respect of a juvenile's right to privacy at all stages, has been reaffirmed. Special legislation concerning migrant workers' and/or refugees' children, which should be in accordance with the relevant provisions of the Convention on the Rights of the Child, was also mentioned.

Institutional and non-institutional treatment

7. The disposition of a juvenile case by diversion, in other words, without resorting to a formal trial, is increasing. Repayment and/or compensation through financial penalties and social work, reconciliation and mediation between the victim and the perpetrator of the crime appear to be the most widespread measures and are often implemented under the authority of ad hoc

social services. For serious crimes, custodial measures are applied in all countries, but the level of the involvement of non-institutional actors in the process of rehabilitation can vary. The right to education during the detention is not everywhere guaranteed and educational labour detention facilities at tightened regime are still in use.

Separation of adults and juveniles

8. The separation of adults and juveniles should be guaranteed in order to avoid any possible violence and the phenomenon of the "school of crime". Where special detention facilities for juveniles do not exist, juveniles should be kept in wards of detention facilities specifically set up for them. In addition, juveniles should be grouped together according to their age. In certain countries, the social contact among adults and juveniles is encouraged because it is seen to enrich the human experience of juveniles. This seems to be particularly true in the case of female juvenile detainees.

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COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 8 (a) of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

United Nations Voluntary Fund for Victims of Torture

Report of the Secretary-General

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GE.96-14365 (E)

I. ANNUAL REPORTS

1. In conformity with the arrangements adopted by the General Assembly for the management of the United Nations Voluntary Fund for Victims of Torture, the Secretary-General draws up an annual report to the General Assembly and, if necessary, the Commission on Human Rights, indicating the funds available, pledges made and contribution received, together with disbursements from the Fund (resolution 36/151 and document A/36/540).

2. At its fifty-second session, in resolution 1996/33 of 19 April 1996 the Commission on Human Rights requested the Secretary-General to continue to keep it informed of the operations of the Fund on an annual basis. The Secretary-General draws the Commission's attention to his annual report on the Fund, submitted to the General Assembly at its fifty-first session (A/51/465), which is available to the Commission, and is supplemented by this report.

II. SOURCES OF FINANCING

Government pledges

3. The pledges mentioned in document A/51/465 as outstanding on 15 September 1996 had not been paid by 15 November 1996.

4. Every year, States participating in the United Nations Pledging Conference for Development Activities receive documentation on the Fund and are invited to make pledges in advance. The pledges are duly recorded and the pledging States notified. At the most recent Conference, held in New York on 4 and 5 November 1996, the following States made pledges to the Fund:

State	Contribution (US$)	Most recent contribution	Year
Algeria	5 000	5 000	1996
Germany	131 579	121 621	1996
Austria	20 000	20 000	1996
Chile	10 000	3 000	1995
Cyprus	1 075	500	1995
Greece	10 300	10 300	1996
Iceland	5 952	5 634	1995
Liechtenstein	8 000	5 691	1996
Luxembourg	12 780	9 490	1996
Monaco	11 741	16 280	1996
Republic of Korea	20 000	10 000	1996
Holy See	1 000	1 000	1988

Contributions received from Governments

5. The following new contributions have been recorded since document A/51/465 was drafted on 15 September 1996:

State	Amount (US$)	Date	No. of previous contributions
Austria	20 000	18 September 1996	12
Belgium	48 076	3 October 1996	6
Kenya	1 000	15 November 1996	4

6. Governments wishing to contribute to the Fund are invited to do so before the next session of the Board of Trustees which is due to he held from 22 to 30 May 1997. Any contribution received after that date will be recorded in the accounts for 1998. In November 1996 the High Commissioner will send a letter to the permanent missions of all States inviting them, as recommended by the General Assembly and the Commission, to contribute regularly to the Fund or, if possible, substantially to increase their contributions.

Contributions from private individuals

7. A regular contributor to the Fund, Mrs. Rita Maran, of Berkeley, United States, paid a sum of US$ 25 on 10 October 1996.

8. Interested Governments, organizations, foundations, enterprises and individuals may pay their contributions into one of the following accounts, specifying "payee: United Nations Voluntary Fund for Victims for Torture":

"UN Geneva General Fund", Société de Banque Suisse, B.P. 2770, CH 1211 Genève 2

Account No. CO.590.160.1 in United States dollars, or CO.590.160.0 in Swiss francs;

Chemical Bank, United Nations Headquarters, New York, N.Y. 10017, United States

Account No. 015-004473 in United States dollars.

9. A receipt will be issued for every contribution paid and the contribution will be mentioned in an addendum to this report if it reaches the secretariat by April 1997. After that date, it will appear in the next report to the General Assembly.

III. GRANTS PAID

10. Since the report to the General Assembly was prepared on 15 September 1996, seven grants, amounting to US$ 100,000 have been paid to organizations in respect of programmes selected by the Board of Trustees at its May 1996 session (see A/51/465, table in para. 26). The payments had remained in abeyance pending submission by the organizations of satisfactory descriptive or financial reports or additional information requested by the Fund's Board or secretariat.

11. Each year, the Board recommends that the sum of US$ 100,000 should be earmarked for special allocation between its sessions, in order to provide emergency grants to programmes threatened with suspension through lack of funds or to individual victims of torture for whom no organization can assume responsibility.

12. Since the previous session of the Board, it has been possible to make two emergency grants from this special-allocation account. One of them (US$ 10,000) was paid the Organization, Amigos de los Sobrevivientes, which provides medical, psychological and social assistance to torture victims from Latin America and was experiencing a serious financial crisis. The other grant (US$ 1,500) was used to provide medical treatment for a torture victim from an African country where no suitable assistance is available. This person was evacuated to France and treated in a specialized centre.

IV. NEEDS ASSESSMENT

13. In its resolution 1996/33, the Commission called upon the Board of Trustees of the Fund to report to it at its fifty-third session and present an updated assessment of the global need for rehabilitation services for torture victims and any need for international funding in that respect. The Board wishes to inform the Commission that at present it does not possess the means of realistically assessing the needs for assistance to torture victims in the coming years.

14. International funding for torture victims is essentially provided by the European Union and the Fund. The main international donor is the European Commission; the Fund is second; there are no others. The information received from the European Commission (Multilateral Relations Directorate, Human Rights and Democratization) and taken from the annual reports submitted to the Commission on the aid provided by the European Union is reproduced in the table below. In 1994 and 1995, the grants provided by the European Commission were charged to the following budget chapter: "Support for rehabilitation centres for torture victims and for organizations offering concrete help to victims of human rights violations". The report for 1996 will be available at the beginning of 1997.

	Grants requested	Amount available	Grants awarded	% granted	Additional amount required
1995	8 410 505 ECUs (US$ 10 689 508)	5 000 000 ECUs (US$ 6 354 855)	5 000 000 ECUs (US$ 6 354 855)	59.4%	3 410 505 ECUs (US$ 4 334 653)
1994	4 350 000 ECUs (US$ 5 528 724)	2 000 000 ECUs (US$ 2 541 942)	2 000 000 ECUs (US$ 2 541 942)	45.9%	2 350 000 ECUs (US$ 2 986 782)
1993			475 000 ECUs (US$ 603 711)		

15. The following information concerns the United Nations Voluntary Fund for Victims of Torture:

	Grants requested	Grants awarded	% granted	Additional amount required
1996	US$ 5 618 645	US$ 2 535 500	45.1%	US$ 3 083 145
1995	US$ 5 827 645	US$ 2 719 680	46.6%	US$ 3 107 965
1994	US$ 5 476 959	US$ 3 698 080	67.5%	US$ 1 778 879
1993	US$ 5 289 413	US$ 2 111 880	39.9%	US$ 3 177 533

16. Each year, the grants awarded correspond to the total amounts which the Board of Trustees is able to recommend to the Secretary-General for allocation. In view of the insufficient contributions received (see table above), the Board avoids the practice of carrying forward a reserve from one year to the next. The Secretary-General follows this recommendation by the Board. On average, the Fund is only able to allocate less than 50 per cent of the total amount requested. The organizations subsidized by the Fund have to seek the necessary additional funds elsewhere. They are duly informed of this by the secretariat of the Fund as soon as they submit their first request for funding. In the light of the above information, international funding requirements for 1995 amounted to approximately US$ 7.5 million. It may be assumed that this represented a minimum requirement for 1996 and that it will probably increase in 1997. As regards the Fund, the annual contributions needed amount to between 5 and 6 million dollars; consequently, the current level of contributions needs to be doubled.

V. GUIDELINES APPLICABLE TO THE MANAGEMENT OF THE FUND

17. In paragraph 19 of its resolution 1996/33, the Commission on Human Rights, restating the terms of the Vienna Declaration and Programme of Action regarding technical cooperation, requested the Secretary-General "to ensure strict and transparent project management rules for the Fund".

18. The Fund does not manage projects; it receives "voluntary contributions for distribution" (General Assembly resolution 36/151). Since it was established in 1981, strict rules have applied to this mandate to receive and distribute voluntary contributions. In addition to the arrangements adopted by the General Assembly for the management of the Fund, referred to in paragraph 1 above, it is also subject to the Financial Regulations of the United Nations, the administrative procedures and principles applicable to the management of voluntary funds, the guidelines applicable to human rights assistance funds (see A/48/520, annex III) and the guidelines adopted by the Board of Trustees of the Fund, which the Board supplements each year if necessary. The latter guidelines are available in the report of the Secretary-General (A/48/520) prepared by the secretariat at the request of the Commission on Human Rights; this contains a report on the Fund's first 10 years of activity (guidelines for organizations on how to apply for grants (appendix II); guidelines for organizations on how to report on the use of grants (appendix IV); guidelines prepared by the Fund (appendix V)). A summary of the guidelines appears in annex III to document A/49/484. The Board of Trustees has adopted no further guidelines since then. At its most recent session, the Board, at the suggestion of a member, decided to revise and update all of its guidelines. A preliminary draft should be ready for consideration by the Board at its next session.

VI. INFORMATION

19. All contributions received since 1981 and disbursements to organizations have been referred to in the annual reports to the General Assembly and to the Commission on Human Rights.

20. In April 1996 an information meeting with representatives of contributing States was organized under the chairmanship of the High Commissioner for Human Rights.

21. In May 1996, following their annual session (see A/51/465), the members of the Board of Trustees of the Fund in turn met with the representatives of regular or potential contributing States.

22. Any interested State receives all the relevant documentation and information available to the secretariat of the Fund.

23. In conformity with Economic and Social Council decision 1996/263 of 23 July 1996, the Fund secretariat will organize an information meeting in 1997 for interested member States and at least two meetings for interested organizations on the occasion of the annual sessions of the Commission on Human Rights and its Sub-Commission.

24. The organization, as suggested by the Economic and Social Council in decision 1996/263, paragraph (a), of an annual information meeting for organizations directly concerned by the projects financed by the Fund would entail the provision of air tickets and per diem for the organizations' representatives, because these organizations possess limited financial resources and most of them are not represented in Geneva. In addition to the direct permanent contact maintained by the Fund secretariat with these organizations throughout the year, and the indirect contacts maintained through United Nations agencies, funds or programmes in the field, whenever representatives of the organizations pass through Geneva, notably during sessions of the Board of Trustees or the Commission on Human Rights and the Sub-Commission, they regularly meet with the members of the Board of Trustees if it is in session in Geneva, or with the secretariat for any necessary consultation. The Chairman of the Board of Trustees also does his utmost to visit, once a year, a country where a number of projects are financed by the Fund, in order to gain a better understanding of the needs of victims and personally to assess the projects.

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COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 8 (b) of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT:

STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Secretary-General

1. The General Assembly, by its resolution 39/46 of 10 December 1984, adopted and opened for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and called upon all Governments to consider signing and ratifying the Convention as a matter of priority.

2. The Convention was opened for signature in New York on 4 February 1985. In accordance with article 27 thereof, the Convention entered into force on 26 June 1987, on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

3. By its resolution 1996/33 A of 19 April 1996, the Commission on Human Rights urged all States to become parties to the Convention as a matter of priority; invited all States ratifying or acceding to the Convention and those States parties which had not yet done so to make the declarations provided for in articles 21 and 22 of the Convention and to consider the possibility of

withdrawing their reservations to article 20; encouraged States parties to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention 1/ as soon as possible and urged States parties whose arrears predated the provision made by the Secretary-General for funding the Committee against Torture from the regular budget to fulfil their obligations forthwith.

4. As at 5 December 1996, the Convention had been ratified, acceded or succeeded to by 101 States. In addition, 12 States had signed the Convention. The list of States that have signed, ratified or acceded to the Convention, as well as the dates of their signature, ratification or accession, is contained in the annex to the present report.

5. As at the same date, 39 of the States parties to the Convention, namely Algeria, Argentina, Australia, Austria, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Greece, Hungary, Iceland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, the Russian Federation, Senegal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey, Uruguay, Venezuela and Yugoslavia, had made the declarations provided for in articles 21 and 22 of the Convention. In addition, two States parties, namely the United Kingdom of Great Britain and Northern Ireland and the United States of America, had made the declaration provided for in article 21 only, thus bringing the total of declarations under that article to 41. 2/ Under article 21, a State party to the Convention may declare at any time that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Convention. Under article 22, a State party to the Convention may declare at any time that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention.

6. The provisions of articles 21 and 22 entered into force on 26 June 1987 in accordance with paragraph 2 of article 21 and paragraph 8 of article 22.

7. The Committee against Torture held its sixteenth and seventeenth sessions at the United Nations Office at Geneva from 30 April to 10 May 1996 and from 11 to 22 November 1996, respectively. In accordance with article 24 of the Convention, the Committee submitted its annual report, 3/ which covered the activities of the Committee at its fifteenth and sixteenth sessions, to the States parties and to the General Assembly at its fifty-first session.

8. The membership of the Committee for 1996 is as follows:

Mr. Peter Thomas Burns	Canada
Mr. Guibril Camara	Senegal
Mr. Alexis Dipanda Mouelle	Cameroon
Mr. Alejandro González Poblete	Chile
Ms. Julia Iliopoulos-Strangas	Greece
Mr. Georghios M. Pikis	Cyprus
Mr. Mukunda Regmi	Nepal
Mr. Bent Sorensen	Denmark
Mr. Alexander M. Yakovlev	Russian Federation
Mr. Bostjan M. Zupancic	Slovenia

Notes

1/ Adopted by the Conference of the States parties on 9 September 1992 in accordance with article 29, paragraph 1, of the Convention (CAT/SP/SR.4) and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992.

2/ The text of the declarations, reservations or objections made by States parties up to 1 March 1994 with respect to the Convention is issued in document CAT/C/2/Rev.3.

3/ Official Records of the General Assembly, Fifty-first Session, Supplement No. 44 (A/51/44).

ANNEX

List of States which have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 1 November 1996

State	Date of signature	Date of receipt of the instrument of ratification, accession or succession
Afghanistan	4 February 1985	1 April 1987
Albania		11 May 1994 b/
Algeria a/	26 November 1985	12 September 1989
Antigua and Barbuda		19 July 1993 b/
Argentina a/	4 February 1985	24 September 1986
Armenia		13 September 1993 b/
Australia a/	10 December 1985	8 August 1989
Austria a/	14 March 1985	29 July 1987
Azerbaijan		16 August 1996 b/
Belarus	19 December 1985	13 March 1987
Belgium	4 February 1985	
Belize		17 March 1986 b/
Benin		12 March 1992 b/
Bolivia	4 February 1985	
Bosnia and Herzegovina		6 March 1992 c/
Brazil	23 September 1985	28 September 1989
Bulgaria a/	10 June 1986	16 December 1986
Burundi		18 February 1993 b/
Cambodia		15 October 1992 b/
Cameroon		19 December 1986 b/
Canada a/	23 August 1985	24 June 1987
Cape Verde		4 June 1992 b/
Chad		9 June 1995 b/
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Costa Rica	4 February 1985	11 November 1993
Côte d'Ivoire		18 December 1995 b/
Croatia a/		8 October 1991 c/
Cuba	27 January 1986	17 May 1995
Cyprus a/	9 October 1985	18 July 1991
Czech Republic		1 January 1993 c/
Denmark a/	4 February 1985	27 May 1987
Dominican Republic	4 February 1985	
Ecuador a/	4 February 1985	30 March 1988

Egypt		25 June 1986 b/
El Salvador		17 June 1996 b/
Estonia		21 October 1991 b/
Ethiopia		14 March 1994 b/
Finland a/	4 February 1985	30 August 1989
France a/	4 February 1985	18 February 1986
Gabon	21 January 1986	
Gambia	23 October 1985	
Georgia		26 October 1994 b/
Germany	13 October 1986	1 October 1990
Greece a/	4 February 1985	6 October 1988
Guatemala		5 January 1990 b/
Guinea	30 May 1986	10 October 1989
Guyana	25 January 1988	19 May 1988
Honduras b/		5 December 1996
Hungary a/	28 November 1986	15 April 1987
Iceland	4 February 1985	23 October 1996 a/
Indonesia	23 October 1985	
Ireland	28 September 1992	
Israel	22 October 1986	3 October 1991
Italy a/	4 February 1985	12 January 1989
Jordan		13 November 1991 b/
Kuwait		8 March 1996 b/
Latvia		14 April 1992 b/
Libyan Arab Jamahiriya		16 May 1989 b/
Liechtenstein a/	27 June 1985	2 November 1990
Lithuania		1 February 1996 b/
Luxembourg a/	22 February 1985	29 September 1987
Malawi		11 June 1996 b/
Malta a/		13 September 1990 b/
Mauritius		9 December 1992 b/
Mexico	18 March 1985	23 January 1986
Monaco a/		6 December 1991 b/
Morocco	8 January 1986	21 June 1993
Namibia		28 November 1994 b/
Nepal		14 May 1991 b/
Netherlands a/	4 February 1985	21 December 1988
New Zealand a/	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Nigeria	28 July 1988	
Norway a/	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986 b/

Poland a/	13 January 1986	26 July 1989
Portugal a/	4 February 1985	9 February 1989
Republic of Korea		9 January 1995 b/
Republic of Moldova		28 November 1995 b/
Romania		18 December 1990 b/
Russian Federation a/	10 December 1985	3 March 1987
Senegal a/	4 February 1985	21 August 1986
Seychelles		5 May 1992 b/
Sierra Leone	18 March 1985	
Slovakia a/		29 May 1993 c/
Slovenia a/		16 July 1993 b/
Somalia		24 January 1990 b/
South Africa	29 January 1993	
Spain a/	4 February 1985	21 October 1987
Sri Lanka		3 January 1994 b/
Sudan	4 June 1986	
Sweden a/	4 February 1985	8 January 1986
Switzerland a/	4 February 1985	2 December 1986
Tajikistan		11 January 1995 b/
The former Yugoslav Republic of Macedonia		12 December 1994 c/
Togo a/	25 March 1987	18 November 1987
Tunisia a/	26 August 1987	23 September 1988
Turkey a/	25 January 1988	2 August 1988
Uganda		3 November 1986 b/
Ukraine	27 February 1986	24 February 1987
United Kingdom of Great Britain and Northern Ireland d/	15 March 1985	8 December 1988
United States of America d/	18 April 1988	21 October 1994
Uruguay a/	4 February 1985	24 October 1986
Uzbekistan		28 September 1995 b/
Venezuela a/	15 February 1985	29 July 1991
Yemen		5 November 1991 b/
Yugoslavia a/	18 April 1989	10 September 1991
Zaire		18 March 1996 b/

Notes

a/ Made the declaration under articles 21 and 22 of the Convention.

b/ Accession.

c/ Succession.

d/ Made the declaration under article 21 of the Convention.